

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

Case No. 1:20-cr-00183-RJJ

Hon. Robert J. Jonker

United States District Judge

v.

**ADAM DEAN FOX, and
BARRY GORDON CROFT, JR.,**
Defendants.

MOTION FOR PERMISSION TO FILE ENLARGED BRIEF

Mr. Croft and Mr. Fox, by their counsel, move the Court to permit the filing of an enlarged brief which has been submitted contemporaneously with this motion.

LCrR 47.1 imposes a 10,800-word limit on dispositive briefs. LCrR 47.2 imposes a 4,300-word limit on non-dispositive briefs. The motion and brief seeking a new trial pursuant to Rule 33 filed in this matter is between the word limits for non-dispositive and dispositive motions at 5,867 words. LCrR 47.1(a) includes a list of “dispositive” motions which does not specifically include Rule 33 motions, but also includes “other dispositive motions as defined by law”. *Id.*

There doesn’t appear to be any controlling authority on whether a motion for new trial is a “dispositive” motion. However, at least one court has suggested that

Rule 33 motions are dispositive. *See United States v. Hocking*, 841 F.2d 735, 736 (7th Cir. 1988) (noting that the purpose of Rule 45 as applied to Rule 33 motions is to avoid “imposition of sentence in advance of resolution of dispositive motions”). Black’s defines “dispositive” as “[b]eing a deciding factor; (of a fact or factor) bringing about a final determination.” DISPOSITIVE, Black's Law Dictionary (11th ed. 2019).

Counsel believes that a motion for new trial is dispositive because it seeks to set aside a final determination of the jury regarding guilt and avoid sentencing. However, out of an abundance of caution and in case the Court finds that the Rule 33 motion is non-dispositive, counsel seeks permission for the enlarged brief.

Respectfully Submitted,

Dated: September 6, 2022

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Dated: September 6, 2022

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